

Teleglobe Communications Corporation, et al
Case No. 02-11518 (MFW) Vinyard V. Cooke, Esquire February 9, 2005

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1 A Nope
2 Q Approximately?
3 A No
4 Q Do you recall when he asked?
5 A I don't, other than it was obviously after the
6 bankruptcy filing
7 Q Do you know if it's 2002, 2003, 2004?
8 A It was prior to 2004. I don't know if it was
9 2003 or 2002
10 Q Do you know if any data for Marc Bouchard has
11 been restored?
12 A I do not, no
13 Q And do you know if any data of Michael Boychuk
14 has been restored?
15 A I do not know about Michael
16 Q In the sentence before that on Exhibit 6 your
17 counsel wrote "In addition, I have advised that for
18 the following six individuals mailbox data was imaged
19 in the summer of 2004: Brunette, Mongrain, Morgan,
20 Bustamante, Cooke, Sciaciatano."
21 Do you see that?
22 A Yes, I do
23 Q Was that mailbox data from their hard drive or
24 from the server?

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1 A I don't believe there's a difference between
2 those.
3 Q Well, why do you believe there's no difference?
4 A I believe that my e-mail is on the server.
5 It's on my computer. It's on the server. I believe
6 there are the same.
7 Q Do people have the option to move e-mails to
8 their server?
9 I'm sorry. Do people have the option to
10 move e-mail to their hard drive?
11 A I don't know how you would do that, quite
12 candidly. I think they might have, but technically I
13 don't even know if there was storage capacity on the
14 computers. I'm now speaking with just talking about
15 my computer knowledge. I don't know if we had
16 separate hard drive abilities in our computers or if
17 it was all on server only information.
18 Q And tell me all the things you did to find out
19 the response to that information. Tell me all of the
20 things you did to find out the response to that
21 question in 2002 before the hard drives were sold.
22 MR COCHRAN: My objection is the question
23 is not clear.
24 A I'm sorry. Could you rephrase the question for

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1 me?
2 MR SCHIMMEL: Please read Mr. Cooke's
3 prior answer.
4 (The reporter read back the last answer.)
5 BY MR. SCHIMMEL:
6 Q My question is tell me all the things you did
7 to find out the answer to that question in 2002 before
8 the hard drives were sold or people took them.
9 MR COCHRAN: Objection. That question is
10 unclear.
11 A I personally did not investigate that issue.
12 Q Tell me all the things that the debtors did to
13 investigate that issue.
14 A I don't know what the debtors did.
15 Q To your knowledge, did the debtors do anything
16 to investigate that issue?
17 A I don't know if they did or not.
18 Q Is your answer complete?
19 A Yes.
20 Q Was there anything in 2002 that would have
21 prevented the debtors from imaging the hard drives of
22 the 28 individuals on Exhibit 5?
23 A On Exhibit 5, I don't know. What's the relevant
24 date?

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1 MR SCHIMMEL: Do you repeat my question?
2 (The reporter read back the last
3 question.)
4 MR COCHRAN: I object to form.
5 THE WITNESS: I would just restate I don't
6 know who Randy Pl...
7 BY MR. SCHIMMEL:
8 Q I'm sorry. Where are you looking?
9 A Exhibit 5. I don't know that in 2002 Paolo Guidi
10 was gone and I don't know if JanDoorn was gone.
11 Q Other than those three individuals, was there
12 anything preventing the debtors from imaging the hard
13 drives of the 25 remaining individuals on Exhibit 5?
14 A I don't know.
15 Q Are you aware of anything that would have
16 prevented it?
17 MR COCHRAN: I object to the form.
18 A Prevented it is not clear. I mean, I don't even
19 know if it's technically possible, but I don't know
20 one way or the other.
21 Q Was there anything preventing the debtors in
22 2002 from imaging the servers before they were sold?
23 MR COCHRAN: I object to form.
24 A Okay. Where are you imaging the servers, you

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1 mean other than the backups that we did throughout
2 that time?
3 **Q. Yes. That's correct.**
4 **A. I don't know.**
5 **Q. Is your answer complete?**
6 **A. Yes.**
7 **Q. So I'm not sure you have given me an answer to**
8 **the question I asked previously.**
9 **The letter from your counsel says in**
10 **paragraph 11 "I have advised that for the following**
11 **six individuals mailbox data was imaged in the summer**
12 **of 2004." And my question is: Was it mailbox data on**
13 **the server or mailbox data on their hard drive that**
14 **was imaged, to your knowledge?**
15 **MR COCHRAN: Objection. Asked and**
16 **answered.**
17 **MR SCHIMMEL: It hasn't been answered.**
18 **A. I answered that I believe those are one and the**
19 **same.**
20 **Q. The question is: Do you know which one was**
21 **imaged?**
22 **MR COCHRAN: Objection.**
23 **A. I do not know. Assuming there's a difference,**
24 **I do not know which one was imaged.**

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1 **Q. Who would know?**
2 **A. David Wolfe would have done that.**
3 **MR SCHIMMEL: Why don't we take a short**
4 **break?**
5 **MR COCHRAN: Sure.**
6 **(A brief recess was taken.)**
7 **MR SCHIMMEL: Please mark this.**
8 **(Cooke Deposition Exhibit No. 9 was marked**
9 **for identification.)**
10 **MR SCHIMMEL: Mark this one also.**
11 **(Cooke Deposition Exhibit No. 10 was**
12 **marked for identification.)**
13 **BY MR SCHIMMEL:**
14 **Q. Mr. Cooke, I have just shown you what has been**
15 **marked as Exhibits 9 and 10. Exhibit 9 is a notice of**
16 **proposed sale of assets by debtors and debtors in**
17 **possession pursuant to miscellaneous asset sale**
18 **procedures.**
19 **A. Yes.**
20 **Q. And it's dated August 16, 2002.**
21 **Exhibit 10 is a notice of proposed sale of**
22 **assets by debtors and debtors in possession pursuant**
23 **to miscellaneous asset sale procedures that's dated**
24 **August 19, 2002.**

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1 **Do you have those documents?**
2 **A. I do.**
3 **Q. Can you describe to me, Mr. Cooke, what those**
4 **notices are?**
5 **A. These are notices that were filed in the**
6 **Bankruptcy Court.**
7 **Q. Regarding the sale of assets of the debtors,**
8 **correct?**
9 **A. Yes.**
10 **Q. And the description of the assets to be sold**
11 **is, if I'm not mistaken, on the first page, if you**
12 **will look at Exhibit 9, the description is the assets**
13 **consist of computer equipment listed in columns C and**
14 **D of the charts attached hereto as Exhibit A.**
15 **Do you see that?**
16 **A. That is correct.**
17 **Q. So why don't we take a look at the chart**
18 **attached as Exhibit A and specifically the second page**
19 **of the chart?**
20 **Do you see the chart has several columns?**
21 **Column A is the name of the person whose computer is**
22 **going to be sold, column B states employment term,**
23 **column C and D indicate whether it's a monitor and/or**
24 **PC that's going to be sold, correct?**

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1 **A. Yes.**
2 **Q. Item 81 or line 81 is the line of John**
3 **Brunette.**
4 **Do you see that?**
5 **A. Yes, I do.**
6 **Q. And this notice of proposed sale appears to**
7 **indicate that Mr. Brunette's computer and monitor was**
8 **going to be sold.**
9 **Do you see this?**
10 **A. Yes, I do.**
11 **Q. And it appears to indicate that it's a laptop**
12 **that's going to be sold, correct?**
13 **A. Yes.**
14 **Q. Was it, in fact, sold?**
15 **A. No.**
16 **Q. Why not?**
17 **A. Well, there are actually two reasons. If you**
18 **will look at Exhibit 10 and you look for John**
19 **Brunette, he's no longer on the list. And the reason**
20 **why is we took everyone who was highly compensated at**
21 **Tele globe, for example, my name is not on the list,**
22 **and anyone who exceeded a certain threshold they were**
23 **viewed as classic insiders and we just felt it was not**
24 **worth the hassle of selling equipment to them. They**

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1 could go out and buy their own. So that's why there's
2 a difference between the two.
3 Then specifically at the time when they
4 left, this is a preapproval but some people opted in
5 and bought it and some people did not. John didn't
6 have the right to, but others have not bought theirs
7 either.
8 Q. So let's take a look then at Exhibit 10, which
9 I take it would be the exhibit reflecting the
10 computers that were actually sold, right?
11 MR. COCHRAN: I object to form.
12 A. No, not necessarily.
13 Q. So let's take a look at Exhibit 10 and maybe
14 you will explain it to me.
15 Exhibit 10 has also on the first page a
16 description of the assets to be sold and the
17 description is the assets consist of computer
18 equipment listed in columns C and D of the chart
19 attached hereto as Exhibit A, correct?
20 A. Yes.
21 Q. If you will look at the chart attached hereto
22 as Exhibit A, for instance, the second page of the
23 chart, you also have the name of the person whose
24 computer is going to be sold?

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1 A. Yes.
2 Q. And then that's under column A, right?
3 A. Yes.
4 Q. Under column B you have employment terms?
5 A. Yes.
6 Q. Under column C and D you have an indication of
7 whether it's the monitor and/or the computer that's
8 going to be sold?
9 A. Or both.
10 Q. Or both. So, for instance, line 80 talks about
11 Kieren Bustamante, correct?
12 A. Yes, it does.
13 Q. And it indicates that his monitor and computer
14 was about to be sold, correct?
15 MR. COCHRAN: I object to form.
16 A. No, that's not correct. This was a -- you can
17 ask me a question.
18 Q. Please explain to me what the line referring to
19 Kieren Bustamante indicates.
20 A. What we did was, because we were in bankruptcy,
21 we did not have the right to dispose of assets
22 without, especially to insiders, without Bankruptcy
23 Court approval. So this list reflects preauthorized
24 sales. And, for example, Kieren is still here, so he

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1 hasn't yet had the opportunity to buy it, but if he
2 does he would pay the full \$125.
3 So some of the times accepted their
4 opportunity to buy the equipment and some did not.
5 Q. I understand. Some of those computers were
6 sold, correct?
7 A. Yes.
8 Q. I'm sorry. Was the computer of Bruce Milla
9 sold on line 99?
10 A. No, it was not.
11 Q. Because he's still at Tele globe?
12 A. Yes. That's correct.
13 Q. And I take it the computer of Kathy Morgan has
14 not been sold either?
15 A. That's correct.
16 Q. And Rebecca S. Iaciatano, her computer still
17 has not been sold?
18 A. Correct.
19 Q. The same thing with respect to Daniel Snyder?
20 A. Yes.
21 Q. I take it this chart indicates an authorization
22 to sell the computers of those individuals to them?
23 A. Yes. It was not proven that they would be
24 buying their own computer.

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1 Q. Before that notice of proposed sale was filed
2 with the Court, tell me whether any steps were taken
3 to confirm that the data on those computers was
4 preserved on a backup tape or the server.
5 A. I'm not aware of them through the steps
6 that would be outlined in the disclosures stating the
7 default standards for preserving the electronic
8 documents, other than that I'm not aware of any other
9 steps.
10 Q. And the steps that you're talking about refer
11 to the preservation of backup tapes?
12 A. Yes. Well, not necessarily weekly, monthly
13 backups, yes.
14 Q. Before selling any of the servers did the
15 debtors advise the Bankruptcy Court that they proposed
16 to sell servers that had discoverable information on
17 them?
18 MR. COCHRAN: I object to form.
19 A. They disclosed to the Bankruptcy Court that
20 they were intending to sell servers. I would have to
21 look at the motion to see exactly what it said.
22 Q. So unless the notice of proposed sale
23 specifically indicates that the debtors intended to
24 sell servers that contained discoverable information,

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1 no notice was given to the Bankruptcy Court?

2 MR COCHRAN: I object to the form.

3 A Can you --

4 Q. I will rephrase the question.

5 A. Yes Thank you

6 Q. I want to know whether the Bankruptcy Court was

7 told by the debtors before the sale of servers took

8 place that those servers contained discoverable

9 information.

10 MR COCHRAN: I object to the form.

11 Q. And I take it your answer is the way for me to

12 find that out is to look at the notice of sale?

13 MR COCHRAN: I object to form.

14 A. That's one way

15 Q. What other way?

16 A. I can't think of anything else sitting here

17 today

18 Q. And when the personal computers and hard drives

19 of individuals were sold by the debtors, was the

20 Bankruptcy Court advised that the debtors proposed to

21 sell materials that contained discoverable

22 information?

23 MR COCHRAN: I object to the form.

24 A. I don't know if they contained discoverable

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1 information or not, okay, in that my understanding was

2 all the information that was on the servers was pulled

3 off. So, once again, you would have to talk to the

4 person who was -- in other words, the presumption is

5 there was discoverable information on the servers at

6 the time when they were sold? I don't know if there

7 were or not, if there was or not.

8 Q. You don't know as you sit here today whether at

9 the time the servers were sold they contained any

10 discoverable information?

11 A. I do not know as we sit here today if they

12 contained discoverable information

13 Q. What steps did you take to find that out before

14 they were sold?

15 MR COCHRAN: I object to form.

16 A. I personally did not take any steps.

17 Q. What steps did the debtors take?

18 A. I don't know.

19 Q. What steps did the debtors take to find out

20 that information before the servers were sold?

21 A. I do not know

22 Q. To your knowledge, did the debtors take any

23 steps to find out that information?

24 A. I don't know if they did or not

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1 Q. Who else would know other than you?

2 A. I think I've talked about this before, but it

3 would be the IT people that were in charge of those

4 servers at the time when they were integrated

5 Q. And who are no longer at the debtors?

6 A. And I don't know if Dave Wolfe was there at

7 that time or not I don't know

8 Q. And you have no knowledge one way or the other?

9 A. No knowledge one way or the other

10 Q. Did you do anything to allow you to prove that

11 the debtors investigated whether the servers and the

12 personal computers contained discoverable information

13 before they were sold?

14 MR COCHRAN: I object to form

15 THE WITNESS: Okay. Could you read that

16 back to me?

17 (The reporter read back the last

18 question.)

19 THE WITNESS: I did nothing to prove

20 BY MR SCHIMMEL:

21 Q. Did the debtors do anything?

22 A. I don't know if they did or not

23 Q. As you sit here today, are you aware of any

24 steps that the debtors took to prove this?

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1 MR COCHRAN: I object to form.

2 A. Other than my prior testimony, I'm not sure

3 And I guess I'm having a hard time. Prove? Maybe you

4 should rephrase that question so I'm more conversant

5 with what you're really asking

6 Q. Are you aware of any steps that the debtors

7 took to be able to demonstrate at some point in time

8 to any court that they investigated whether the

9 electronic equipment that was sold contained

10 discoverable information?

11 MR COCHRAN: I object to form

12 A. Again, "they"? I'm not -- can you maybe break

13 that up or rephrase it for me? You're talking about

14 "they" Telelobe, anyone at Telelobe?

15 Q. The debtors. I'm trying to find out --

16 A. I'm not trying to be difficult I'm just

17 honestly trying to be precise with you.

18 Q. I understand. I'll try to clarify it.

19 Tell me all the steps that the debtors

20 took to satisfy their legal obligation to investigate

21 whether what they sold contained discoverable

22 information.

23 MR COCHRAN: I object to form

24 A. I'm not aware if there's a legal obligation.

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1 I'm not aware of any steps that were taken
2 **Q. Is your answer complete?**
3 A Yes
4 **Q. Is there any list or log of the employees whose**
5 **data was stored in Canada, server data was stored in**
6 **Canada as opposed to the United States?**
7 A I'm sorry?
8 THE WITNESS: Read that question back
9 again. At any time?
10 (The reporter read back the last
11 question)
12 BY MR. SCHIMMEL:
13 **Q. The period of time would be February 2000 to**
14 **May 2002.**
15 A You mean during that time -- I'm sorry. Once
16 again, are you saying is there right now a list?
17 **Q. That would tell us who are the employees whose**
18 **data was stored in Canada and who are the employees**
19 **whose data was stored in the United States. I'm**
20 **talking about the server data.**
21 A We do have a list for the e-mail accounts for
22 the individuals that were on the Reston server. There
23 obviously was a list for Canadian employees or I guess
24 you could take people, you know, do it the reverse way

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1 because they wouldn't be on both. They would be on
2 one or the other.
3 But my understanding is that information
4 for the e-mail system in Canada is not accessible or
5 is otherwise not available or lost.
6 **Q. Just to make sure I understand, the employees**
7 **and officers of the U.S. debtors had data saved**
8 **exclusively only in the United States?**
9 A My understanding is if you were based in
10 Reston, you were on the Reston server. If you were
11 based in Montreal, you were on the Montreal server.
12 And there were a handful of people that went back and
13 forth. I don't know if it would just be a case-by-
14 case issue.
15 **Q. And could you be based in Montreal and be an**
16 **employee or an officer of the debtors, the U.S.**
17 **debtors?**
18 A I'm sorry. Will you ask that again?
19 THE WITNESS: Can you read that back to
20 me?
21 (The reporter read back the last
22 question)
23 THE WITNESS: Yes
24

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1 BY MR. SCHIMMEL:
2 **Q. So there were employees of the U.S. debtors who**
3 **were based in Canada and whose server data would be**
4 **stored on backup tapes located in Canada?**
5 A I don't know.
6 **Q. Are you aware of any?**
7 A Maybe Server 1.
8 **Q. Other than Fortin, can you think of any person**
9 **who was an employee or officer of the U.S. debtor**
10 **whose server data would be stored in Canada?**
11 A I'm sorry. What other do I think of anyone?
12 THE WITNESS: I'm sorry. What was the
13 question?
14 (The reporter read back the last
15 question)
16 THE WITNESS: Possibly Pichette.
17 BY MR. SCHIMMEL:
18 **Q. Anybody else?**
19 A Possibly Boychuk.
20 **Q. Was he an employee of the U.S. debtors?**
21 A I believe he was an officer of the U.S.
22 debtors.
23 **Q. Other than Boychuk?**
24 A Those are the three that I can think of.

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1 **Q. So really all of the employees and officers of**
2 **the U.S. debtors, apart possibly from those three,**
3 **would have their server data stored in the U.S.?**
4 A I don't know if that's true or not. I don't
5 know if that's true, but my understanding, my
6 understanding is that if you were based in Reston, you
7 were on the Reston server.
8 **Q. And the only three people you can think of who**
9 **may have been based in Montreal and had their data on**
10 **the servers in Montreal are Fortin, Pichette and**
11 **Boychuk?**
12 A Those are the three that I can think of
13 today, but there may be others.
14 **Q. And with respect to all of the others who were**
15 **based in Reston you have a catalog?**
16 A Yes. For the e-mail servers based on the Reston
17 servers we have a catalog of e-mails.
18 **Q. And that's for the e-mail servers?**
19 A That is for the e-mail servers.
20 **Q. How about the file servers, do you have a**
21 **catalog for that?**
22 A No, we do not have a file catalog.
23 **Q. Do you know if at any point in time there was a**
24 **catalog for the file servers located in Reston?**

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1 A Yes, there was.
2 Q. And it was lost?
3 A It was lost or it's otherwise unavailable.
4 Q. Why is it unavailable?
5 A It could be that -- I know that we have
6 different systems than we used to have and so the
7 question is do the systems that we have now still
8 speak to the systems where that information was
9 stored?
10 Q. Do you know if that is the issue as opposed to
11 the catalog was lost?
12 A I don't know which one of those it is
13 Q. Who would have the answer to that question?
14 A. David Wolfe.
15 Q. I would like you to take a look at Exhibit 4,
16 which is the debtors' disclosure pursuant to default
17 standard for discovery of electronic documents.
18 A. Yes I have that
19 Q. Under 5b.
20 A Yes.
21 Q. The debtors wrote "The backup tapes are old and
22 have been mounted several times."
23 A. Yes
24 Q. What does "mounted several times" mean?

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1 A. These are tapes like the size of a tape measure
2 and what you do is you put them in what's called a
3 robot and they are turned and the data is read and
4 then put back up on the server.
5 So when they're mounted, they're
6 physically put into this robot
7 Q. Why does the fact that they were mounted
8 several times make it more difficult to restore the
9 tapes?
10 A I don't know
11 Q. But it's your understanding that that's the
12 case?
13 A Yes.
14 Q. Under 3a do you see the sentence that says,
15 "Depending upon the identity and location of the
16 employee, or the server utilized by the employee, the
17 existing backup tapes for the Debtors' e-mail systems
18 are in storage at the Debtors' facilities in Reston,
19 Virginia, or the Recall facility in Montreal?"
20 A Yes, I do.
21 Q. The Recall facility in Montreal, is that the
22 facility of the company called Recall that you
23 described earlier?
24 A Yes And it's actually in Laval

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1 Q. With respect to the tapes that the debtors have
2 restored, first of all, how many tapes have the
3 debtors restored, to your knowledge?
4 A I have no idea I mean ever?
5 Q. No. Those that were restored as of January
6 1st, 2004, how many of them are there?
7 A I'm sorry Say that again What was the date?
8 Q. We have been advised by your counsel that the
9 debtors have restored some backup tapes as of January
10 1, 2004 and I believe you and I discussed them some
11 time ago.
12 A Okay I'm sorry Say that again The
13 debtors?
14 Q. Have restored some backup tapes as of January
15 1, 2004.
16 A Right. That's for the six individuals.
17 Q. Right. How many tapes are we talking about?
18 A I don't know It could be -- sometimes it's
19 all on one tape and sometimes it could be across six
20 tapes It just depends They are multiplexed
21 Q. So you don't know if it's one or six?
22 A It could be, it could be ten It just depends
23 on what day, what server.
24 Q. Is it less than twenty?

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1 MR COCHRAN: I object to form.
2 A Yes My common understanding is it's usually
3 somewhere between one and six
4 Q. Do you know if those tapes contain data for
5 individuals other than the six we discussed? Let
6 read to you exactly who they are: Brunette, Mongrain,
7 Morgan, Bustamante, Cooke and Sciaciatano.
8 A And for those people your question is?
9 MR. SCHIMMEL: Can you read my question?
10 (The reporter read back the last
11 question)
12 BY MR. SCHIMMEL:
13 Q. Let me rephrase the question and clarify it.
14 Do you know if the tapes that have been
15 restored contain data of individuals other than those
16 six?
17 A Yes
18 Q. And that data has been restored as well?
19 A I don't think so. I don't really know that
20 process, but my understanding is you restore the tape
21 and then you pull out the individuals that you want
22 and put it up on the server, but technically I don't
23 know how that's really done.
24 Q. That was made possible because you had the

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1 catalog?
2 A That was made possible because we had the
3 catalog, yes
4 Q Do you know if with respect to those six
5 individuals there are other tapes that contain their
6 data?
7 A I'm sorry Say that again
8 THE WITNESS: I'm sorry Could you read
9 that back?
10 (The reporter read back the last
11 question)
12 MR COCHRAN: I object to the form
13 THE WITNESS: Yes
14 BY MR SCHIMMEL:
15 Q Are there other tapes that contain the data of
16 those individuals that have not yet been restored?
17 A Yes
18 Q I would like to talk to you for a minute about
19 the efforts to collect the paper documents.
20 A Sure
21 MR COCHRAN: Is this in addition to what
22 you've already covered or are you going to go back to
23 re-cover what you already covered?
24 MR SCHIMMEL: Yes We have covered very

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1 little of the collection of paper documents.
2 MR COCHRAN: I disagree How much longer
3 do you think you will have?
4 MR SCHIMMEL: At least until 5:00
5 o'clock
6 BY MR SCHIMMEL:
7 Q Mr. Cooke, who were the individuals who were
8 specifically in charge of collecting the paper
9 documents of the debtors' employees both in Canada and
10 the U.S ?
11 MR COCHRAN: I object to form
12 A I'm not sure the debtors had any employees in
13 Canada They might have I don't know enough about
14 that.
15 To the extent that there were documents in
16 the U.S, I think I described that earlier today in
17 terms of moving from one building to the other and
18 then moving them all back to our present offices
19 Q What you have described before is that you gave
20 an oral instruction to people who worked with you in
21 the legal department to collect the paper documents of
22 a certain number of individuals.
23 A I don't think that was my testimony
24 MR COCHRAN: I object to the form

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1 Q So what did you do to make sure that the
2 collection of paper documents was complete?
3 MR COCHRAN: I object to form.
4 A It's just as I described earlier, which was it
5 was actually facsimile boxed up everything that was
6 left in the Teleglobe facilities and shipped them to
7 Chantilly and then they were parsed through and sorted
8 and then brought back to our offices.
9 So specifically I gave no directions on
10 that That just happened as a matter of course in us
11 vacating our office building
12 Q Who are the people in facilities who were
13 involved in that process?
14 A Tens if not more people I mean, it was
15 everyone that was engaged in that exercise
16 The departments had to box up their materials and put
17 them out It occupied a good number of people, if not
18 everyone, at Teleglobe for more than a week to put all
19 of that material together
20 Q Was that done at some point in the spring of
21 2002?
22 A No It would have been done when we moved out
23 of the office building
24 MR COCHRAN: Off the record for just a

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1 moment
2 (Discussion of the record)
3 (A brief recess was taken)
4 BY MR SCHIMMEL:
5 Q Before the facilities people went to collect
6 the paper documents of employees or officers of the
7 debtors, did you personally give any instruction to
8 anyone as to how they were supposed to do their job?
9 A I didn't speak to anyone in facilities, no
10 Q Did you speak to anyone else about how the
11 people in facilities were supposed to do their job?
12 A Other than the things during May of 2002 in
13 talking to the legal team whether the legal team went
14 out and spoke to people in facilities -- we did have
15 people talking to them but I don't know what, if
16 anything, they said
17 Q Do you know if the people on the legal team
18 instructed people in facilities to meet with each
19 individual employee or officer to see what documents
20 they had and how it was stored and to make sure the
21 collection was complete?
22 A I don't believe it occurred, no
23 Q Did you ever instruct anybody to make sure that
24 that would occur?

50 (Pages 194 to 197)

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1 A. I did not
 2 Q. Why not?
 3 MR. COCHRAN: I object to form.
 4 A. I don't know. I just did not
 5 Q. Was an index made at the time the facilities
 6 people gathered all the documents of everything that
 7 was collected?
 8 A. I don't know if they did or not
 9 Q. Have you ever seen one?
 10 A. No.
 11 Q. And I take it from your testimony that sometime
 12 after that people involved in the sale of the business
 13 to Cerberus went through those boxes to pull some
 14 documents such as operational agreements?
 15 A. Yes. We had to divide core/non-core under the
 16 terms of the sale/purchase agreement and a group of
 17 people went out to Chantilly and divided up core, what
 18 I call core Cerberus-owned documents versus estate
 19 documents
 20 Q. Would it be fair to say that the core documents
 21 are those that were subsequently transferred to
 22 Cerberus?
 23 A. I can just tell you the core documents were
 24 Cerberus's documents. So, in other words, anything

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1 that related to assets or services that were being
 2 sold to Cerberus, all documentation of those went to
 3 Cerberus.
 4 Q. Was a copy preserved before it went to
 5 Cerberus?
 6 A. I don't know what they -- I was not in charge
 7 of that process, so I don't know what they did.
 8 Q. Who would be the people in charge of that
 9 process?
 10 A. I don't specifically know who was in charge of
 11 dividing it.
 12 Q. I believe you mentioned earlier Kathy Morgan
 13 and John Brunette.
 14 A. Yes. Obviously, Kathy and John were at the
 15 ultimate control for that, for the merger and
 16 acquisition
 17 Q. Would they know whether an index of the
 18 documents shipped to Cerberus was prepared?
 19 A. They might know
 20 Q. Who else might know?
 21 A. Well, all of the attorneys -- well, I don't
 22 know who went over there, so I would just be
 23 speculating as to whether any of those attorneys are
 24 still with us or not. I don't know

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1 Q. When you just said, "I don't know who went
 2 there," what did you refer to by "there"?
 3 A. In other words, to the Chantilly office
 4 building. I know a team of lawyers went over.
 5 Q. To pull documents?
 6 A. But the only one I knew who went over is Cihon,
 7 who I know is gone
 8 Q. So that I understand, some documents were
 9 pulled from the boxes stored in Chantilly, correct?
 10 A. Some documents were pulled, yes
 11 Q. And they were given to Cerberus as part of the
 12 sale, correct?
 13 A. And they were ultimately transferred to
 14 Cerberus.
 15 Q. And you don't know whether a copy was made?
 16 A. I do not know whether a copy was made.
 17 Q. And you don't know whether an index was
 18 prepared?
 19 A. That is correct.
 20 Q. With respect to the other documents that
 21 remained at Chantilly, was an index prepared?
 22 MR. COCHRAN: Objection to form.
 23 A. At that time not that I'm aware
 24 Q. I believe you testified earlier that some

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1 people went through those remaining files at Chantilly
 2 and took out personal documents, personal folders.
 3 A. Right, personal effects, things like that
 4 Q. The rest of it was sent to the debtors'
 5 offices?
 6 A. That is correct
 7 Q. Was an index made of all of the personal
 8 materials that were pulled?
 9 A. No
 10 Q. What was done with those?
 11 A. I don't know. I was not part of that process.
 12 I just know that personal items were pulled
 13 Q. And you have no idea what happened to them?
 14 A. I know they are not presently in our offices
 15 Q. Do you know where they are?
 16 A. No.
 17 Q. Do you know if they were discarded?
 18 A. I do not know.
 19 Q. Who are the individuals who were in charge of
 20 pulling the personal files, I mean what you described
 21 as the personal files?
 22 A. Right. It would have been the same group of
 23 people
 24 Q. Working under your supervision?

51 (Pages 198 to 201)

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1 MR. COCHRAN: I object to the form
2 A No They were not working under my
3 supervision
4 Q Well, they were people working in the legal
5 department, right, the lawyers?
6 A Right But I'm only one part of that
7 department
8 Q Well, under whose supervision were they
9 working?
10 A I believe they were working under John's and
11 Kathy's supervision
12 Q You've never seen an index of whatever those
13 people pulled?
14 A I have never seen an index of what those people
15 pulled
16 Q And you have never heard that an index had been
17 prepared of those, quote/unquote, personal files?
18 A I haven't heard one way or the other I'm not
19 sure I have ever inquired
20 Q And would it be fair to say that after some
21 documents were shipped to Cerberus and after some
22 additional documents were segregated on the belief
23 that they may be personal files, the remaining boxes
24 were sent to the office of the debtors?

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1 MR. COCHRAN: I object to the form
2 A I believe that the remaining boxes that were
3 not shipped to Cerberus and which do not reflect
4 personal deals did come to our offices, yes
5 Q Was an index of those documents prepared at
6 that time?
7 A At that time, no
8 Q How many boxes are we talking about, the boxes
9 that were shipped to the offices of the debtors?
10 MR. COCHRAN: I'm sorry Would you read
11 that back?
12 (The reporter read back the last
13 question)
14 THE WITNESS: I know that there are
15 approximately a thousand boxes of documents in our
16 offices
17 BY MR. SCHIMMEL:
18 Q At any point in time has an index been prepared
19 of those boxes?
20 A Yes Not all, but yes
21 Q Why was an index not prepared of all of the
22 boxes?
23 A (Pause)
24 MR. COCHRAN: Are you concerned that the

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1 question calls for personal information?
2 THE WITNESS: I can see if I can answer
3 and it will work
4 A But in response to your request for production
5 of documents, we have reviewed those documents and we
6 have provided to you a summary or an index of
7 responsive documents
8 Q Have you reviewed the thousand boxes in
9 response to our document request?
10 A We have reviewed the thousand boxes.
11 Q When have you reviewed the thousand boxes?
12 A Over the last month maybe before It started
13 soon after - I don't remember when your request for
14 production of documents came in
15 Q But it's after our request came in that you
16 reviewed the thousand boxes?
17 A Yes
18 Q And you determined that a subset of those
19 thousand boxes were responsive?
20 A Yes Based on the limitations included in
21 your request for production of documents, yes
22 Q And you prepared an index that was submitted to
23 us I believe yesterday night?
24 A Yes I don't know when it was submitted

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1 Q When was the index prepared?
2 A The index has been in process over the last --
3 that same time period We're doing it over time
4 Q When is the first time you saw it?
5 A I don't know I have seen the index I've
6 seen parts of the index
7 Q When?
8 A Last week
9 Q Is any other index in existence regarding the
10 thousand boxes of documents in your offices?
11 A No
12 Q The only index that exists is the one that was
13 provided to us?
14 A Let me repeat that and say to my knowledge, the
15 only list that exists is with you There may be other
16 lists, but I am not aware of any
17 Q You have never seen any other list?
18 A I have not seen any other list
19 Q And you're not aware of the existence of any
20 other list?
21 A I'm not aware of the existence of any other
22 list
23 Q Do you know when facilities boxed those
24 documents the process that they went through to

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1 organize them?
2 A I do not, other than having seen what happened
3 to the legal department.
4 Q. What happened to the legal department?
5 A In the legal department we went file cabinet by
6 file cabinet emptying each one and stacking them up
7 and then they came around and they were taken away.
8 Q. Were the files of the debtors in Reston
9 maintained by individual?
10 A Some were, yes.
11 Q. And there were also some central files for each
12 department?
13 A I know that legal had a central file.
14 Q. What kind of documents would be in the central
15 file in legal as opposed to the files of individuals?
16 A We had, for example, a room that had all of our
17 service agreements all in one central place. I know,
18 for example -- let's see. Are there any others that I
19 can think of?
20 That's the one that comes to mind. I'm
21 not sure I can think of any others like that. We may
22 have been the only one that did it that way. I don't
23 know.
24 Q. Do you have any idea whether people in

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1 Q. Please go ahead.
2 A That's the most that I can remember at that
3 time. I mean, there were a lot of things, a lot of
4 moving parts at that time.
5 Q. But this is what you remember as you sit here
6 today?
7 A As I sit here today, that's what I remember.
8 Q. And you don't remember any other reasons why
9 you didn't instruct people in facilities to collect
10 documents in the order in which they were maintained?
11 A I can't think of anything else.
12 Q. Do you know if anybody else at the debtors
13 instructed facilities to collect documents in the
14 order in which they were maintained?
15 A I don't know what other people were doing.
16 Q. To your knowledge, did that happen?
17 A To my knowledge, I don't know one way or the
18 other.
19 Q. Have you ever investigated to see if it had
20 happened, if in fact facilities was instructed to
21 collect documents in the order in which they were
22 maintained?
23 A I'm sorry. What was the question again?
24 Q. Let me rephrase it.

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1 facilities boxed documents in the way they were
2 maintained in the ordinary course of business with
3 respect to the other departments?
4 A I have no idea.
5 Q. Did you ever give any instruction to anybody to
6 make sure that that would happen?
7 MR. COCHRAN: I'm sorry. Would you read
8 that back?
9 (The reporter read back the last
10 question.)
11 MR. COCHRAN: That what?
12 MR. SCHIMMEL: That facilities would box
13 documents in the order in which they were maintained.
14 THE WITNESS: No, I did not.
15 BY MR. SCHIMMEL:
16 Q. Why not?
17 MR. COCHRAN: I object to form.
18 A We were in the middle of the bankruptcy and we
19 were trying to sell the business and trying to move
20 out of our offices at the same time with a shorthanded
21 staff and an overworked legal department.
22 Q. Is your answer complete?
23 A. There's probably more that I could specify, but
24 that's --

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1 Have you ever investigated whether anybody
2 instructed facilities to collect documents in the
3 order in which they were maintained?
4 A. I have not investigated, no.
5 Q. To your knowledge, has anybody under you
6 conducted that investigation?
7 A. To my knowledge, no one under me would have
8 conducted that investigation.
9 Q. To your knowledge, did anybody conduct that
10 investigation?
11 A. I don't know one way or the other.
12 Q. We've received an index of documents maintained
13 in Canada that is eight boxes long.
14 A. Right.
15 Q. Are those documents of the debtors, the U.S.
16 debtors?
17 A. Probably some.
18 Q. Why were they stored in Canada?
19 A. There were certain functions that were provided
20 in Canada to the U.S. and other entities. For
21 example, the finance group was largely based in
22 Montreal and collections is another one.
23 So, for example, all of the collections,
24 receivables, everything else that was handled by the

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1 debtors, the personnel who were handling those matters
 2 were based in Montreal. So the debtors files and the
 3 Canadian entities' files and other Teleglobe entities
 4 files are all commingled together.
 5 MR. SCHIMMEL: Can you read back that
 6 answer?
 7 (The reporter read back the last answer.
 8 BY MR. SCHIMMEL:
 9 Q. Do you know when those documents were gathered?
 10 A. I'm sorry? Which documents?
 11 Q. Those that are based in Montreal.
 12 MR. COCHRAN: Objection to form.
 13 A. You're talking about based in the Iron Mountain
 14 facility?
 15 Q. Well --
 16 MR. COCHRAN: You're talking about the
 17 eight-box index?
 18 MR. SCHIMMEL: Yes. That's exactly what I
 19 am talking about.
 20 BY MR. SCHIMMEL:
 21 Q. The documents that are located in Canada, when
 22 were they collected and put in boxes?
 23 A. Over the life-span of Teleglobe's operations.
 24 Q. So you mean some of those boxes that were sent

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1 Q. So people in facilities in Reston went to box
 2 some of the documents in Canada?
 3 A. No. The [Objection] and Canadian people in the
 4 facilities department that would have been
 5 responsible for sending the boxes back and forth to
 6 Iron Mountain.
 7 Q. Did people in Reston have any supervisory
 8 authority over facilities in Canada?
 9 A. I believe so.
 10 Q. Who are the people in Reston who had
 11 supervisory authority over facilities in Canada?
 12 A. I believe that Mr. Benson was ultimately in
 13 charge of all real estate property facilities for
 14 both the U.S. and Canada.
 15 Q. Would Mr. Benson have had authority over the
 16 people who boxed the documents in Canada and sent them
 17 to Iron Mountain?
 18 MR. COCHRAN: Objection to form.
 19 A. I have no idea.
 20 Q. To your knowledge, was any instruction given to
 21 the employees who worked in facilities in Canada to
 22 box things in the order in which they were maintained?
 23 A. I have no idea.
 24 Q. Did you after April 24 of 2002 give any

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1 to Iron Mountain before April 24, 2002?
 2 A. Yes.
 3 Q. And would the index that you provided us
 4 indicate that?
 5 A. It should.
 6 Q. Have you reviewed that index?
 7 A. I have seen portions of the index.
 8 Q. What portions have you seen?
 9 A. I just saw -- as I went through those indexes.
 10 I just took a random look to see what was in there.
 11 Q. So when you took a random look what are the
 12 portions of the index that you looked at?
 13 A. I just remember there would be financial
 14 documents, tax documents, sales documents, marketing
 15 documents. It just depended on the specific index.
 16 Q. To your knowledge, what efforts were made to
 17 put these documents in the order in which they were
 18 maintained?
 19 A. I have no idea how those documents were
 20 originally stored or prepared to be stored by Iron
 21 Mountain.
 22 Q. Who would know that?
 23 A. Probably somebody in facilities who's
 24 responsible for that.

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1 instruction to anyone to make sure that that would
 2 happen?
 3 A. I did not.
 4 Q. To your knowledge, did anyone at the debtors
 5 give that instruction?
 6 A. I don't know.
 7 Q. Did you personally ever investigate whether
 8 that instruction was given?
 9 MR. COCHRAN: Objection to instruction?
 10 MR. SCHIMMEL: I believe that we have been
 11 talking about for the last few minutes.
 12 MR. COCHRAN: Which is what?
 13 MR. SCHIMMEL: That the people in the
 14 facilities department in Canada boxed documents in the
 15 order in which they were maintained.
 16 A. I don't know. I don't know the other.
 17 Q. I'm asking you -- you investigated.
 18 A. I did not investigate.
 19 Q. Do you know if anyone at the debtors ever
 20 investigated to make sure that people in facilities in
 21 Canada boxed documents in the order in which they were
 22 maintained?
 23 A. I don't know. I don't know of anybody who
 24 did.

54 (Pages 210 to 213)

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1 Q. Is your answer complete?
 2 A Yes
 3 Q. Before the servers were sold, did anyone at the
 4 debtors advise BCE that the debtors proposed to sell
 5 equipment that may contain discoverable information?
 6 MR. COCHRAN: Objection to form
 7 A. Again, all of those were sold pursuant to
 8 bankruptcy notices. I presume that all of the lawyers
 9 and other people listed on the service would have
 10 gotten the notice. I'm not aware one way or the other
 11 as to whether anybody communicated with BCE about that
 12 outside of those notice provisions.
 13 Q. Is your answer complete?
 14 A. Yes
 15 Q. To your knowledge, did anyone at the debtors
 16 tell Mr. Fortin that the debtors proposed to sell
 17 equipment that may contain discoverable information?
 18 MR. COCHRAN: Objection to the form.
 19 A. I don't know one way or the other.
 20 Q. To your knowledge, did anyone at the debtors
 21 tell Mr. Pichette that the debtors proposed to sell
 22 equipment that may contain discoverable information?
 23 MR. COCHRAN: Same objection.
 24 A. I don't know

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1 Q. I would like you to take a look at Exhibit 8
 2 and specifically page 8.
 3 MR. COCHRAN: Specifically what?
 4 MR. SCHIMMEL: Page 8 in Exhibit 8.
 5 BY MR. SCHIMMEL:
 6 Q. The description under Rule 26(a)(1)(B).
 7 A Yes.
 8 Q. And I will read that to you: "Categories of
 9 documents in Debtors' possession, custody or control
 10 that Debtors may use to support their claims include
 11 but are not limited to: contracts; board minutes and
 12 resolutions; budgets, estimates, proposals and other
 13 presentations; financial statements; press releases;
 14 public filings; analysts' reports; correspondence; and
 15 other related documents."
 16 Do you see that?
 17 A. Yes, I do.
 18 Q. To your knowledge, have all those documents
 19 been produced to the defendants in this case?
 20 A. I think we've responded to your discovery
 21 requests and provided the indexes. I'm not sure you
 22 have actually seen any of the documents.
 23 Q. This is not my question.
 24 My question is whether to your knowledge

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1 all of the documents that are mentioned here have been
 2 produced?
 3 MR. COCHRAN: I think it was responsive
 4 A. I mean contracts, board minutes and
 5 resolutions, budgets? I would have to go back and --
 6 I have not seen the index that was provided to you.
 7 But I would presume that -- I can't presume one way or
 8 the other. I would be guessing as to whether there is
 9 information on each of these that would relate back to
 10 the indexes that were provided to you.
 11 Q. To your knowledge, are any of those documents
 12 not responsive to the defendants' document request?
 13 MR. COCHRAN: I object to form
 14 A. I'm not sure. Which documents?
 15 Q. Those that are listed under 26(a)(1)(B). Are
 16 there any documents listed here that in your mind are
 17 not responsive or called for by the defendants'
 18 document request?
 19 MR. COCHRAN: I object to form.
 20 A. I'm not sure how to answer that. These are
 21 listed as relevant documents. I would presume -- I
 22 don't know how to answer the question
 23 I can say that we will, if you look at
 24 those indexes, everything that we have within the time

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1 period that you have requested, other than privileged
 2 documents, is going to be made available to you,
 3 everything we have in Reston.
 4 Q. So let me rephrase my question.
 5 Are all the documents covered in Exhibit 8
 6 under Rule 26(a)(1)(B) reflected in the index?
 7 MR. COCHRAN: I object to the form.
 8 A. I don't know. I don't know. I haven't seen
 9 the index. So it should be, but I don't know
 10 Q. Is your answer complete?
 11 A. Yes.
 12 Q. Have the debtors employed any outside vendors
 13 or consultants with respect to the preservation,
 14 collection, maintenance or production of the debtors'
 15 documents?
 16 MR. COCHRAN: Are you including both
 17 electronic and paper?
 18 MR. SCHIMMEL: Everything
 19 A. Yes
 20 Q. Who are the vendors that you've retained?
 21 A. I believe Diane Barrasso is the only one who
 22 has been retained, but there may be others. That's
 23 the only one that I know of
 24 And that's Barrasso Consulting

55 (Pages 214 to 217)

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1 Q. Where is she located?
2 A. Physically I think their offices are in New
3 Jersey.
4 Q. Is there a contract with Barrasso Consulting?
5 A. There must be.
6 Q. Have you ever seen it?
7 A. Well, it would had to have been filed with -- I
8 believe it got filed with the Bankruptcy Court. I
9 have seen a lot of contracts. Does that one stand
10 out? I can't remember. I believe it probably is
11 attached to a bankruptcy motion.
12 Q. What is the scope of her duties and
13 responsibilities?
14 A. I would have to look at that. I don't know if
15 she wrote an engagement letter. And it could be that
16 she was actually retained by Richards, Layton. I
17 don't remember how it was phrased.
18 MR. COCHRAN: I think beyond what we have
19 disclosed in the electronic discovery disclosure and
20 perhaps any bankruptcy motion, although I don't know
21 whether there's been one, beyond those things it's
22 work product and we will direct him not to answer.
23 Q. When was Ms. Barrasso of Barrasso Consulting
24 retained, to your knowledge?

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1 A. Sometime in 2004.
2 Q. Do you remember more or less when?
3 A. Sometime after the case was filed.
4 Q. Is Ms. Barrasso responsible for restoring
5 backup tapes?
6 A. At any time or presently?
7 Q. At any time.
8 MR. COCHRAN: Is she responsible for --
9 MR. SCHIMMEL: Let me clarify the
10 question.
11 BY MR. SCHIMMEL:
12 Q. Is Ms. Barrasso involved in any way in the
13 restoration of backup tapes?
14 MR. COCHRAN: I'm sorry. Your voice
15 trailed off.
16 MR. SCHIMMEL: Mr. Cochran is right. I
17 will clarify the question.
18 BY MR. SCHIMMEL:
19 Q. Is Barrasso Consulting involved in the
20 restoration of backup tapes?
21 MR. COCHRAN: I object to the form.
22 A. I believe we sent her a couple of tapes. I
23 don't know what she did with them, so I don't know if
24 she -- I don't know what she did with them.

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1 Q. When did you send her a couple of tapes?
2 A. Sometime in the second half of 2004.
3 Q. Which tapes were those?
4 A. They were just --
5 MR. COCHRAN: I think that's probably far
6 enough.
7 THE WITNESS: Okay.
8 MR. COCHRAN: To the extent that we have
9 disclosed information regarding Ms. Barrasso, that's
10 available to you. Let me not be required to disclose
11 anything further with regard to consultants that we
12 have engaged for purposes of litigation.
13 MR. SCHIMMEL: Well, we're entitled to
14 know what backup tapes have been restored.
15 MR. COCHRAN: You can ask that question,
16 but you don't need to ask what Ms. Barrasso is doing.
17 BY MR. SCHIMMEL:
18 Q. Other than the backup tapes that are described
19 in the letter of Mr. Cochran which is Exhibit 6, were
20 any other backup tapes restored?
21 A. Let me see if I can be talking about in
22 paragraph 11?
23 Q. The last sentence of paragraph 11.
24 MR. COCHRAN: You're asking whether any

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1 backup tapes other than those relating to those
2 individuals in paragraph 11?
3 Q. Other than the backup tapes described in the
4 last sentence in paragraph 11, I would like to know if
5 backup tapes were restored.
6 A. Yes. Other than those restored.
7 MR. COCHRAN: That has all been asked and
8 answered earlier.
9 A. The only one I personally know is the Patrick
10 Pichette ones that were requested by John, but I know
11 numerous. All through 2002 and 2003 we were restoring
12 people's e-mails for operational or other reasons.
13 Q. Operational and what other reasons? Tell me
14 all of the reasons that backup tapes were restored in
15 2002 and 2003.
16 A. Somebody internally wanted to figure out what
17 was the state of their correspondence at the time when
18 they left.
19 Q. So you restored backup tapes in the ordinary
20 course of business?
21 A. In the ordinary course.
22 Q. In 2002 and 2003?
23 A. Yes.
24 MR. COCHRAN: I believe we have already

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1 been over this ground
 2 **Q. Other than Barrasso Consulting, have the**
 3 **debtors retained any outside vendors or consultants**
 4 **with respect to the preservation, maintenance,**
 5 **collection or production or review of documents?**
 6 MR COCHRAN: If you want to limit it to
 7 your first question and not your second, I'll let him
 8 answer it.
 9 MR SCHIMMEL: I don't understand.
 10 MR COCHRAN: You asked two questions,
 11 vendors or consultants.
 12 MR SCHIMMEL: I would like to know --
 13 it's a yes or no question -- whether the debtors have
 14 retained any other vendors or consultants with respect
 15 to the preservation, maintenance, collection or review
 16 process of documents.
 17 A. Right. And to my knowledge, we have an
 18 engagement letter or a contract with Recall for
 19 maintaining and storing and we have, we or Richards,
 20 Layton has an agreement with Barrasso Consulting.
 21 Those are the two that I'm aware of.
 22 **Q. I would like you to take a look at your**
 23 **affidavit.**
 24 A. Sure.

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1 **Q. In paragraph 5 in the first sentence you state**
 2 **"Teleglobe has sold practically all of its IT**
 3 **equipment, including servers, tape restore machines,**
 4 **and other computer equipment formerly used to back up**
 5 **and store e-mail and other electronic data."**
 6 **Do you see that?**
 7 A. Yes, I do
 8 **Q. What computer equipment other than backup tapes**
 9 **did Teleglobe formerly use to back up and store e-mail**
 10 **and other electronic data?**
 11 A. Specifically, I can't tell you
 12 **Q. In general?**
 13 A. We had the robots and the robots interplay with
 14 another piece of equipment that gets on the server
 15 **Q. All of those pieces of equipment have to do**
 16 **with backup tapes?**
 17 A. Yes. I'm sorry. Maybe I misunderstood you
 18 **Q. So the question is: Other than backup tapes,**
 19 **were there electronic storage devices that the debtors**
 20 **used?**
 21 A. Such as?
 22 **Q. CD's.**
 23 A. I don't know
 24 **Q. Did you ever -- let me rephrase the question.**

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1 **When you wrote this paragraph 5 you only**
 2 **had in mind equipment revolving around backup tapes?**
 3 A. I think I was just trying to say that much of
 4 our IT equipment has been sold and we've lost
 5 effectively every one of our 150 people who used to
 6 deal with IT items
 7 **Q. And what I am trying to find out is whether**
 8 **there were other electronic storage devices such as**
 9 **optical disks, CD's, things of that nature.**
 10 A. There very well may have been.
 11 **Q. Did you ever instruct anybody to preserve those**
 12 **pieces of equipment?**
 13 A. I did not
 14 **Q. Did you ever instruct anybody to find out**
 15 **whether they existed?**
 16 A. I did not
 17 **Q. To your knowledge, did the debtors ever**
 18 **instruct anyone to figure out whether those pieces of**
 19 **equipment existed?**
 20 MR. COCHRAN: I object to form
 21 A. I don't know whether they did or not.
 22 **Q. Do you know whether the debtors instructed any**
 23 **person to find out whether those devices existed?**
 24 A. I don't know if they did or not

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1 **Q. Is there any way for us today to figure out**
 2 **whether those storage devices existed?**
 3 MR COCHRAN: What storage devices?
 4 MR SCHIMMEL: Any electronic storage
 5 devices other than backup tapes, such as, for
 6 instance, optical disks, CD's, things of that nature
 7 BY MR SCHIMMEL:
 8 **Q. How can we know whether as of April 24, 2002**
 9 **there were any such devices?**
 10 MR COCHRAN: Objection to form
 11 A. I don't know. We would have to -- the only,
 12 obviously the only IT person still left is David
 13 Wolfe
 14 **Q. You never gave any instruction to any person to**
 15 **ascertain whether those equipments existed, meet with**
 16 **employees to find out whether they used them, gather**
 17 **them?**
 18 A. I must candidly say I don't know what the
 19 equipment is that you're talking about. So the only
 20 thing that I was aware of was that we had electronic
 21 backup tapes for our computers and in terms of the
 22 electronic world of Teleglobe, those are the items
 23 that -- I mean, nobody came forward and told me we had
 24 other storage capabilities. I never asked them

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1 whether they did. I did ask them to maintain the
2 electronic tapes.
3 Q. Is your answer complete?
4 A. Yes.
5 Q. Did you ever make any effort to figure out
6 whether employees or officers had computer disks?
7 A. Like CD drives? What do you mean "computer
8 disks"?
9 Q. Yes. Any floppy disks, any disks that could be
10 used to store electronic information.
11 A. I did -- I'm sorry.
12 THE WITNESS: Can I get the question
13 repeated?
14 (The reporter read back the last
15 question.)
16 THE WITNESS: No, I did not. I personally
17 did not.
18 BY MR. SCHIMMEL:
19 Q. Did you instruct anyone to conduct that
20 investigation?
21 A. I did not.
22 Q. To your knowledge, did the debtors conduct that
23 investigation?
24 A. I don't know if they did or not.

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1 Q. Obviously, with respect to all those questions
2 I'm talking about after April 24, 2002.
3 A. Okay.
4 Q. That doesn't change your answer?
5 A. As far as I know. I know we do have some
6 formatted disks and some floppy disks and things in
7 those boxes and I think you're going to see in the
8 indexes there should be notations about where they
9 are, which box they're in.
10 Q. But other than those disks that were retrieved
11 and placed in boxes, you don't know if individuals
12 when they left took disks with them?
13 A. No, I do not.
14 Q. What steps did you take, if any, to ask
15 individual employees and officers to preserve such
16 disks and provide them to the debtors?
17 A. Other than my discussions with my legal group
18 and the e-mail discussed with Chris Cihon, I'm not
19 aware of any other steps.
20 Q. Do you know if people, employees or officers of
21 the debtors had hand-held devices such as BlackBerries
22 or Palm Pilots?
23 A. There were a few.
24 Q. Who had them?

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1 A. It was typically, on the one hand, personnel
2 executives, senior executives.
3 Q. What efforts were made, if any, to collect
4 those devices after April 24, 2002?
5 A. Those were the ones that they were not
6 Telelobe equipment that was not software supported
7 by Telelobe, if that makes sense.
8 Q. Was any effort made to determine whether those
9 devices contained any information related to
10 Telelobe?
11 A. They were not doing anything operating on their
12 servers, so unless it went through our system we
13 haven't subpoenaed them for their BlackBerries or
14 their Palms.
15 Q. Did the debtors conduct any investigation to
16 ascertain whether those devices such as BlackBerries
17 and Palm Pilots contained information related to
18 Telelobe?
19 THE WITNESS: I'm sorry. Could you repeat
20 that question?
21 (The reporter read back the last
22 question.)
23 THE WITNESS: I do not and I don't know
24 whether the debtors did or not.

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1 BY MR. SCHIMMEL:
2 Q. I understand from what you said before that
3 facilities collected the paper documents of the legal
4 department at some point in the summer of 2002?
5 A. Yes.
6 Q. And those documents at that time were in place
7 boxes and shipped to Chantilly?
8 A. Well, we had a legal department -- the legal
9 department was a little bit unique because some of
10 them were active files and some of them were dead
11 files. So for live files, they sent to the new
12 office building, but the dead files were put in a separate
13 stack and were sent to Chantilly.
14 Q. The documents produced to the defendants in
15 response to the defendants' document request included
16 both documents from the live files and from the dead
17 files?
18 A. If not privileged, yes.
19 Q. Can you explain to me the process that was
20 followed to search for responsive documents in the
21 live files?
22 A. Well, the live files and the dead files are now
23 effectively in the same place. In other words, the
24 dead files took a different route but have

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1 ultimately come back to our offices. And all of the
 2 boxes that were in our facility we have had people go
 3 through and if a box has information in it that is
 4 within the time frame of your request, that entire box
 5 has been put into the center of the room and been
 6 indexed and you have been provided the index.
 7 **Q. I would like to go back to the backup tapes for**
 8 **a second.**
 9 **You testified that some of the backup**
 10 **tapes of the debtors have been restored?**
 11 A. Yes.
 12 **Q. I would like to know whether those backup tapes**
 13 **have been searched after the backup tapes were**
 14 **restored?**
 15 A. Okay. The tapes that were backed up --
 16 MR. COCHRAN: I object to form.
 17 A. -- that have been restored to the extent that
 18 they are still on our servers, and we're cataloging
 19 which of those there are, I think will be searched.
 20 **Q. Has any one of them been searched so far?**
 21 A. Searched for what?
 22 **Q. For documents.**
 23 A. You mean pursuant to the electronic protocols
 24 that we've exchanged information on?

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1 **Q. No. Apart from that.**
 2 MR. COCHRAN: You want to know outside of
 3 the normal channel of discovery whether they were been
 4 searched? Is that what you are asking?
 5 MR. SCHIMMEL: No. I am trying to find
 6 out whether the tapes that have been restored after --
 7 let me clarify my question.
 8 MR. COCHRAN: Please.
 9 BY MR. SCHIMMEL:
 10 **Q. In paragraph 11 of Mr. Cochran's letter which**
 11 **is Exhibit 6 he mentions that some backup tapes have**
 12 **been restored, correct?**
 13 A. Yes.
 14 **Q. I want to know, and it's just a yes or no**
 15 **question, whether following the restoration there has**
 16 **been a search for documents?**
 17 MR. COCHRAN: For purposes of
 18 clarification, are you asking whether there was a
 19 search outside of the process outlined in the
 20 Delaware District Court's e-discovery default
 21 standards which is the normal process that we have
 22 been implementing in this case or are you asking
 23 something else?
 24 MR. SCHIMMEL: I'm asking a very simple

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1 question.
 2 BY MR. SCHIMMEL:
 3 **Q. Has a search been conducted following the**
 4 **restoration?**
 5 MR. COCHRAN: The reason I need you to
 6 clarify is because if you are asking for searches
 7 outside of the normal discovery process, I'll need to
 8 interpose a work product objection.
 9 MR. SCHIMMEL: I'm not asking for the
 10 result of the search and I'm not asking for any work
 11 product. I'm asking for a yes or no answer. Are you
 12 instructing him not to answer?
 13 MR. COCHRAN: If you are asking whether
 14 the tapes were searched to respond to your discovery,
 15 I'll let him answer that.
 16 If you are asking whether tapes were
 17 searched by the debtors for purposes of litigation,
 18 I'm not going to let him answer that.
 19 If you are asking whether the tapes were
 20 searched in the ordinary course of business, I'll let
 21 him answer that.
 22 So I need you to clarify your question.
 23 MR. SCHIMMEL: Okay. Let me ask then two
 24 questions.

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1 BY MR. SCHIMMEL:
 2 **Q. Have the tapes been searched following the**
 3 **communications between the plaintiffs and the**
 4 **defendants under the default standards?**
 5 MR. COCHRAN: If you are confused --
 6 understand that question to be asking whether they
 7 have been searched in the ordinary course of discovery
 8 and that I think is a permissible question.
 9 A. I don't believe so. I honestly have not -- I
 10 don't think anything has been done since we started
 11 talking about the standards to be reviewed.
 12 That might be an overbroad answer. I
 13 believe we have been waiting for clarification on what
 14 is to be searched before we searched anything.
 15 **Q. Do you know if the tapes of Mr. Pichette that**
 16 **were searched in 2002 -- let me rephrase that.**
 17 **Do you know if the data restored**
 18 **concerning Mr. Pichette in 2002 was searched following**
 19 **restoration?**
 20 A. I don't know if Mr. Pichette's information that
 21 was restored, and that's the one that I do know was,
 22 if it's still on the servers -- at the time I know
 23 that John did look for some of his information. I
 24 have no idea what he did with it, if anything.

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1 Q. Do you know if it was searched using search
2 terms?
3 A. No. No, not search terms as I understand them
4 between the two of you
5 Q. Well, what --
6 A. I mean, I don't know how John, what he did
7 What he did with the Pichelte information I have no
8 idea.
9 Q. And you don't know how the search was
10 conducted?
11 A. No, I don't
12 Q. If we wanted to find out what backup tapes have
13 been overwritten between the fall of 2002 and early
14 2003 or in the last few months of 2002, how could we
15 go about obtaining that information?
16 MR. COCHRAN: I object to form
17 Q. You've testified earlier that some tapes were
18 overwritten in the latter part of 2002. If we want to
19 know what tapes were overwritten, how would we obtain
20 that information?
21 MR. COCHRAN: I object to form
22 A. It would be very difficult to do because we
23 don't have a catalog of -- those tapes that were
24 overwritten were all Montreal tapes. And, once again,

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1 because we don't have a catalog, it's going to be very
2 difficult for us to match up what tapes should be
3 there for that day and what tapes are there for that
4 day
5 And I don't know, once again, I don't know
6 if the tapes are ordered sequentially, but I don't
7 believe they are, so it's not like that you would find
8 a gap
9 MR. SCHIMMEL: Can we take a five minute
10 break?
11 THE WITNESS: Sure
12 (A brief recess was taken.)
13 BY MR. SCHIMMEL:
14 Q. Mr. Cooke, I would like to point your attention
15 to item 5b.
16 A. I'm sorry. On which exhibit?
17 Q. In Exhibit 4.
18 A. Yes
19 Q. 5b talks about the problems reasonably
20 anticipated in connection with restoring the e-mails
21 and electronic documents and 5b says, "The backup
22 tapes are old and have been mounted several times.
23 This has caused excessive wear on the tapes resulting
24 in some unrestorable data using existing hardware and

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1 software systems
2 A. Yes
3 Q. When you talk about existing hardware and
4 software systems are those that the debtors owned
5 prior to April 2002 or other existing hardware and
6 software systems?
7 A. I think I can help you on this because what
8 they're really talking about is just like we talked
9 about these slave machines or whatever you call these
10 machines that are used to mount the tapes in, for
11 example, in the problem that we had machines that
12 would hold 30, 40 tapes. Those were sold. And so we
13 had to go out in the market when we started to realize
14 that we had to buy up additional tapes. We got a
15 smaller robot which that one holds three or five tapes
16 at a time. And so because it was originally stored on
17 one machine and then going to be restored by another
18 machine, I think that is I understand that has been
19 the cause of some tape problems
20 Q. What would be the problem exactly?
21 A. I think it's comparable to if I record a tape
22 on a VCR and then I go to my friend's house and I try to
23 play the same tape on my VCR, I might get grainy
24 images because it's not the same machine. I think

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1 it's effectively that
2 Q. And so the second set of machines were machines
3 bought after the bankruptcy filing?
4 A. Yes. We had to go out in other words, we
5 sold the big machine. We didn't even think we could
6 move them over to the new building. They were just
7 simply too large for the building that actually fits
8 within our server room.
9 Q. Do you remember when the tape restore machines
10 were sold?
11 A. No
12 Q. Was it sometime in 2002?
13 A. Or early 2003
14 Q. And that was after your meeting with people in
15 Montreal?
16 A. Yes
17 Q. Did you give any instruction to any person to
18 make sure that whatever equipment had to be --
19 MR. COCHRAN: Excuse me, I can't hear
20 your voice
21 Q. Did you give any instruction to anyone not to
22 sell equipment if that could cause further damage to
23 the backup tapes?
24 MR. COCHRAN: I object to the form

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1 A. I would just say I had no idea whether it would
2 cause damage or not and I did not discuss anything
3 relating to the retention of machinery.
4 **Q. So at the time the tape restore machines were**
5 **sold, you didn't ask any questions of anyone as to**
6 **whether that would possibly further damage the backup**
7 **tapes in their possession, custody and control?**
8 MR. COCHRAN: I object to the form.
9 A. I did not have discussions about the
10 implications of selling equipment that effectively we
11 couldn't use.
12 **Q. And the effect of selling that equipment I take**
13 **it is that this caused further problems to the tapes?**
14 MR. COCHRAN: I object to form.
15 A. In some instances we have had difficulty
16 restoring data.
17 **Q. To your knowledge, did the debtors give any**
18 **instruction to any person to avoid selling equipment**
19 **when the sale would further damage the backup tapes in**
20 **the debtors' possession, custody or control?**
21 MR. COCHRAN: I object to form.
22 A. I'm not aware of any instruction personally.
23 **Q. Wasn't that important?**
24 MR. COCHRAN: I object to form.

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1 A. Candidly, what you would do is you would just
2 go to the next day, one day or the other, forward or
3 back. So other certain tapes that we can't restore,
4 that's restored on our current systems. That doesn't
5 mean it's lost.
6 For example, this idea of other vendors
7 being able to what I have been told is crack the
8 tapes, I'm not sure that's implicated. But in our
9 ability to restore our own tapes internally using our
10 own hardware and software, I would not be able to
11 quantify how many tapes are unreadable. I don't think
12 it's ...
13 **Q. You cannot quantify how many tapes are**
14 **unreadable as a result of selling the equipment, the**
15 **tape restore machines?**
16 MR. COCHRAN: I object to form.
17 A. Correct.
18 **Q. Did you at any point in time give any**
19 **instruction to any person to copy backup tapes to make**
20 **sure that remounting them would not cause a loss of**
21 **data?**
22 THE WITNESS: Could you read that back to
23 me?
24 (The reporter read back the last

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1 question.)
2 THE WITNESS: I guess there's a
3 presumption in there that just because they cannot be
4 restored using our existing equipment that the data is
5 lost, and I'm not sure I agree with you.
6 So I guess there's a presumption there
7 that --
8 BY MR. SCHIMMEL:
9 **Q. There's really not meant to be a presumption in**
10 **my question. Paragraph 5b says, "The backup tapes are**
11 **old and have been mounted several times."**
12 **My only question is whether at any point**
13 **in time you asked that tapes be copied so that**
14 **whatever problems caused by the fact that they were**
15 **mounted several times would not exist?**
16 THE WITNESS: Okay. Could you read that
17 question back to me again?
18 I'm sorry. I think there are a couple of
19 questions in there, it's questions or presumptions
20 inside the question, so I'm just trying to accurately
21 respond.
22 (The reporter read back the last
23 question.)
24 THE WITNESS: Okay. If we break that

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1 question up, I did not have any conversations about
2 making copies. And then I take -- I think the rest of
3 it has a presumption that I'm not sure I agree with.
4 But the answer to your question is I did
5 not have any discussions about people making copies.
6 BY MR. SCHIMMEL:
7 **Q. At any point in time?**
8 MR. COCHRAN: I'm sorry?
9 **Q. At any point in time?**
10 A. Well, now I get into a privilege issue, so
11 maybe we better walk outside. We will be right back.
12 (The witness and Mr. Cochran left the
13 deposition room for a brief period of time.)
14 THE WITNESS: If you want to read back the
15 question?
16 (The reporter read back the pending
17 question.)
18 THE WITNESS: I have had discussions with
19 people about making copies of tapes.
20 BY MR. SCHIMMEL:
21 **Q. With who?**
22 A. Third-party vendors.
23 **Q. Which ones?**
24 MR. COCHRAN: That's privileged. That's

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1 work product.
2 **Q. When did you have those discussions?**
3 A I had a set sometime in early 2003
4 MR. COCHRAN: Then I'm mistaken
5 A It was just technically just seeing
6 effectively --
7 MR. COCHRAN: Then I'm mistaken if it's
8 2003
9 A Somebody came in --
10 MR. COCHRAN: Let me consult with you
11 again.
12 THE WITNESS: Okay
13 (The witness and Mr. Cochran left the
14 deposition room for a brief period of time.)
15 MR. COCHRAN: I'll tell you what. I'll
16 let him answer that question on the condition of
17 non-waiver. That is, if you agree that it's not a
18 waiver of work product, I will let him answer.
19 I'm unclear, frankly, based on what I
20 understand as to whether it's work product or not.
21 MR. SCHIMMEL: Okay. That's fine.
22 BY MR. SCHIMMEL:
23 **Q. So can you --**
24 MR. COCHRAN: If you're in agreement it's

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1 BY MR. SCHIMMEL
2 **Q. Rather than utilizing your own people?**
3 A Our own people and our own internal resources
4 **Q. To do what?**
5 A To restore the tapes.
6 **Q. And what are the third-party vendors that you**
7 **consulted?**
8 A There was one firm who was based in Washington
9 I can't remember what it was, but he came out and made
10 a presentation
11 **Q. When was that?**
12 A Sometime in 2003.
13 **Q. Do you remember when?**
14 A No.
15 **Q. Was any contract ever entered into with that**
16 **consultant?**
17 A No.
18 **Q. To whom did he make the presentation?**
19 A To John and John Brunette and I.
20 **Q. Why did he make it to John Brunette and you?**
21 MR. COCHRAN: Where?
22 **Q. Why did he make it to John Brunette and you?**
23 A Because John Brunette requested it and I was
24 assisting him in the process.

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1 not a waiver?
2 MR. SCHIMMEL: I agree that we don't
3 intend to cause you to waive attorney-client
4 privilege.
5 And we would not expect that any of the
6 answers that Mr. Cossette gave at his deposition
7 were --
8 MR. COCHRAN: I didn't hear 90 percent of
9 what you said.
10 MR. SCHIMMEL: I said I agree that we do
11 not intend to take the position that Mr. Cooke's
12 answer would waive work product privilege.
13 MR. COCHRAN: That's fine.
14 MR. SCHIMMEL: In the same fashion that we
15 don't expect that any of the answers of Mr. Cossette
16 at his deposition would have been a waiver.
17 MR. COCHRAN: That I would have to go back
18 and review the transcript for. The first part is
19 fine. The second part we will reserve our rights.
20 That means you may now answer.
21 THE WITNESS: We had a third-party vendor
22 come in just to discuss whether it would be simpler or
23 easier to make copies and manipulate them that way
24 rather than using our own people.

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1 **Q. Did Mr. Brunette ask you to be present?**
2 A I don't remember. I wouldn't have been present
3 if he didn't want me to be.
4 **Q. Do you remember what specific tapes the**
5 **consultant was looking at?**
6 A He didn't look at the tapes. He was just
7 speaking generally about the process, how it works.
8 **Q. And what were the tapes that Mr. Brunette was**
9 **considering restoring?**
10 A The backup tapes.
11 **Q. Which ones?**
12 A It would have been some or all.
13 **Q. Was any action taken as a result of that**
14 **meeting?**
15 A Only that we decided not to pursue it.
16 **Q. Why?**
17 A Price.
18 MR. COCHRAN: Mr. Schimmel, it's now 25
19 minutes of 6:00 and we have been at it since 10:00
20 this morning. How much longer do you expect that you
21 will have?
22 MR. SCHIMMEL: Well, I will adjourn the
23 deposition now.
24 Very clearly there were very many

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1 questions to which you didn't have the answer today,
2 so we will have to adjourn the deposition.
3 MR. COCHRAN: I'm pleased to continue this
4 evening to allow you to finish
5 MR. SCHIMMEL: I am pleased to continue,
6 but the problem is with respect to numerous questions
7 that were covered by the notice the answer was "I
8 don't know "
9 MR. COCHRAN: So you're finished for this
10 evening?
11 MR. SCHIMMEL: We're adjourned for this
12 evening
13 MR. COCHRAN: We will reserve our rights
14 then. Thank you
15 Let's go.
16 THE WITNESS: Thank you, gentlemen.
17 (Discussion off the record.)
18 BY MR. SCHIMMEL:
19 Q. Mr. Cooke, what did you do to prepare for this
20 deposition?
21 A. I met with my counsel
22 Q. When did you meet with your counsel?
23 A. Yesterday
24 Q. Do you mean Mr. Cochran?

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1 A. Yes
2 Q. Anybody else?
3 A. David Wolfe was there.
4 Q. Was that to prepare for your deposition?
5 A. Yes, it was.
6 Q. Were you shown any documents in that
7 preparation?
8 A. I saw the list of topics, the original notice.
9 Q. Did you see anything else?
10 A. I don't think so
11 Q. Was Mr. Wolfe shown any documents?
12 A. He also saw the notice.
13 Q. Did he see anything else?
14 A. I don't think so.
15 Q. Did you do anything else to prepare for the
16 deposition?
17 A. No. I did speak with Mr. Wolfe during that
18 prep.
19 Q. Yesterday?
20 A. Yesterday.
21 Q. Did you do anything else to prepare for this
22 deposition?
23 A. Not that I remember today.
24 MR. SCHIMMEL: Thank you very much

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1 (Deposition adjourned at 5:40 p.m.)
2
3 I N D E X
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5 Examination by Mr. Schimmel 3
6
7 E X H I B I T S
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13 5 Two-page document captioned "Selected
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16 8 Debtors' Initial Disclosures Pursuant To
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1 COOKE DEPOSITION EXHIBITS MARKED
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3
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1
2
3 REPLACE THIS PAGE
4 WITH THE ERRATA SHEET
5 AFTER IT HAS BEEN
6 COMPLETED AND SIGNED
7 BY THE DEPONENT
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1 State of Delaware)
2)
3 New Castle County)
4
5 CERTIFICATE OF REPORTER
6 I, Kurt A. Fetzer, Registered Diplomat
7 Reporter and Notary Public, do hereby certify that
8 there came before me on the 9th day of February, 2005,
9 the deponent herein, VINYARD V COOKE, ESQUIRE, who
10 was duly sworn by me and thereafter examined by
11 counsel for the respective parties; that the questions
12 asked of said deponent and the answers given were
13 taken down by me in Stenotype notes and thereafter
14 transcribed by use of computer-aided transcription and
15 computer printer under my direction
16 I further certify that the foregoing is a true
17 and correct transcript of the testimony given at said
18 examination of said witness
19 I further certify that I am not counsel,
20 attorney, or relative of either party, or otherwise
21 interested in the event of this suit
22
23
24 Kurt A. Fetzer, RDR, CRR
Certification No. 100-RPR
(Expires January 31, 2008)
DATED:

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